



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

GULF COAST MEDICAL EVALUATIONS  
1805 NORTHERN DRIVE  
LEAGUE CITY TX 77573

#### **Respondent Name**

COMMERCE & INDUSTRY INSURANCE

#### **Carrier's Austin Representative Box**

Box Number 19

#### **MFDR Tracking Number**

M4-11-0397-01

#### **MFDR Date Received**

September 29, 2010

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "our provider is eligible to perform service billed."

**Amount in Dispute:** \$2,061.54

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "The issue of chiropractic scope of practice regarding a Needle EMG has been decided by Stephen Yelenosky, Judge, 345<sup>th</sup> District Court, and Travis County, Texas. I have attached his letter of 08/17/10 where he explains the Rule 75.17(d) of the Texas Board of Chiropractic Examiners is invalid; thereby finding that a doctor of chiropractic is not permitted to be reimbursed for a needle EMG under the Texas WC Statute."

**Response Submitted by:** Chartis, 4100 Alpha Road, Suite 700, Dallas, Texas 75244

### **SUMMARY OF FINDINGS**

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
March 25, 2010	95861 Needle EMG	\$314.70	\$0.00
March 25, 2010	95903, 95904, 95934 Nerve Conduction Tests	\$1,546.84	\$238.63
March 25, 2010	99244-25 Office Consultation	\$200.00	\$0.00
TOTALS		\$2,061.54	\$238.63

## ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### **Background**

1. 28 Texas Administrative Code §133.307, effective May 25, 2008, 33 *Texas Register* 3954, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.203, effective March 1, 2008, 33 *Texas Register* 364, sets the reimbursement guidelines for the disputed service.
3. 22 Texas Administrative Code §75, effective December 24, 2009, 34 *Texas Register* 9208, sets out the scope of practice for chiropractors.
4. District Court of Travis County, 250<sup>th</sup> Judicial District No. D-1-N-GN-06-003451, Honorable Stephen Yelenosky, judge presiding, Order on cross-motions for partial summary judgment dated November 24, 2009
5. Texas Court of Appeals, Third District at Austin, NO. 03-10-00673-CV, Opinion dated April 5, 2012
6. Texas Court of Appeals, Third District at Austin, NO. 03-10-00673-CV, Mandate dated August 8, 2013
7. The services in dispute were reduced/denied by the respondent with the following reason codes:

Pertinent explanations of denial/reduction

- 185-The rendering provider is not eligible to perform the service billed.

### **Issues**

1. Is the rendering provider eligible to perform needle electromyography?
2. Is the rendering provider eligible to perform nerve conduction tests?
3. Is the requestor entitled to reimbursement for the nerve conduction tests?
4. Is the rendering provider eligible to perform an office consultation?
5. Is the requestor entitled to reimbursement for the office consultation?

### **Litigation Background for Needle EMG and MUA**

Portions of the Texas Board of Chiropractic Examiners rules of practice were challenged by the Texas Medical Association and the Texas Medical Board in 2009. At issue was whether 22 Texas Administrative Code §75.17(a)(3), (c)(2)(D), (c)(3)(A), and (e)(2)(O) were within the scope of chiropractic practice in Texas. Specifically, the parties sought judgment on whether rules allowing Chiropractors to perform needle electromyography (EMG) and manipulation under anesthesia (MUA) were valid. On November 24, 2009, the 345th District Court issued a judgment in which presiding judge Honorable Stephen Yelenosky concluded that needle EMG and MUA exceeded the statutory scope of chiropractic practice in Texas. The Texas Board of Chiropractic Examiners appealed the district court's judgment to the Texas Court of Appeals, Third District. The Texas Court of Appeals in *Tex. Bd. Of Chiropractic Examiners v. Tex. Med. Ass'n.*, 375 S.W.3d 464 (Tex. App. – Austin, 2012, pet. den.) issued an opinion affirming the district court's judgment, and concluding that needle EMG and MUA services are not within the chiropractic scope-of-practice. The Chiropractic Board exhausted its appeals and on August 8, 2013, the mandate affirming the district court's judgment was issued. The mandate states "...we affirm the remainder of the district court's judgment that subparts 75.17(a)(3), (c)(2)(D), (c)(3)(A), and (e)(2)(O) of the Texas Board of Chiropractic Examiners' scope-of-practice rule are void." In accordance with the Texas Court of Appeals opinion, the final mandate, and the scope of chiropractic practice requirement in 28 Texas Administrative Code §134.203(a)(6), needle EMG and MUA services may not be reimbursed.

### **Findings**

1. Disputed service code 95861 is described as needle electromyography (EMG), 2 extremities. According to the medical documentation found, this service was performed by Lawrence Wayne Parks, D.C. (Doctor of Chiropractic). Needle EMG involves insertion of a needle into a patient's muscle for the purpose of measuring electrical signals from that muscle. 28 Tex. Admin. Code section 134.203(a)(6) states "Notwithstanding Medicare payment policies, chiropractors may be reimbursed for services provided within the scope of their practice act." The division finds that disputed service code 95861 is not within the scope of chiropractic practice because it is an electro-diagnostic test that involves the insertion of a needle into the patient. The carrier's denial that the provider was not eligible to perform this service is supported. No reimbursement can be recommended for the needle EMG pursuant to 28 Tex. Admin. Code section 134.203(a) (6).

2. Disputed services 95903, 95904, and 95934 fall in the category of nerve conduction tests under applicable AMA current procedural terminology (CPT). These tests involve placing a stimulating electrode directly over the nerve to be tested. These are surface tests that do not involve needles. According to the medical documentation found, these services were performed by Lawrence Wayne Parks, D.C. (Doctor of Chiropractic). As stated in the Texas Court of Appeals, Third District at Austin, NO. 03-10-00673-CV, Opinion dated April 5, 2012

In the second provision, paragraph(c)(3)(A), TBCE imposed certification and supervision requirements on any licenses who administered “electro-neuro diagnostic testing” that varied according to whether the testing was “surface (non-needle)” or involved the use of needles. The import or effect of paragraphs (c)(2)(D) and (c)(3)(A), as the parties agree, was that chiropractors with specified training and certification could utilize needle EMG in evaluating or examining patients. In their live petitions and summary-judgment motions, the Physician Parties challenged the validity of the two rule provisions **specifically addressing needle EMG** [emphasis added]- 75.17(c)(2)(D) and (c)(3)(A) – plus the general standard regarding use of needles-75.17(a)(3).”

That is, surface tests were not in question during this suit. Pursuant to §75.17(c)(3)(A) effective December 24, 2009, 34 Texas Register 9208, services 95903, 95904, and 95934 are within the scope of chiropractic practice because they are surface tests. The workers’ compensation carrier denial of 185-The rendering provider is not eligible to perform the service billed, is therefore not supported. Reimbursement is recommended for these services.

3. The fee guideline applicable to these services is 28 Texas Administrative Code §134.203, Titled *Medical Fee Guideline for Professional Services*. In the absence of a contracted rate, the reimbursement for a professional service, including an evaluation and management service, is established under paragraph (c). §134.203 (c) states “To determine the MAR for professional services, system participants shall apply the Medicare payment policies with minimal modifications. (1) For service categories of Evaluation & Management, General Medicine, Physical Medicine and Rehabilitation, Radiology, Pathology, Anesthesia, and Surgery when performed in an office setting, the established conversion factor to be applied is \$52.83.

Reimbursement is recommended in accordance with 28 Texas Administrative Code §134.203(c) as follows:

Code	Calculation for Locality 0440218 Houston	Maximum Allowable
95903	(54.32/36.8729) x \$63.62 for 4 Units	\$93.72
95904	(54.32/36.8729) x \$47.86 for 4 Units	\$70.50
95934	(54.32/36.8729) x \$50.51 for 2 Units	\$74.41
		\$238.63

4. Disputed service 99244 is an office consultation for a new or established patient (moderate complexity). . According to the medical documentation found, this service was performed by Lawrence Wayne Parks, D.C. (Doctor of Chiropractic). The workers’ compensation carrier denied payment because 185-The rendering provider is not eligible to perform the service billed. 22 Texas Administrative Code §75.17(c)(2)(A) states “Examination and Evaluation: (1) In the practice of Chiropractic, licensees of this board provide necessary examination and evaluation of services.” The Division finds that 99244 is within the chiropractic scope of practice in Texas. The carriers’ denial is not supported.
5. The fee guideline applicable to evaluation and management services including the office consultation in dispute is 28 Texas Administrative Code §134.203, Titled *Medical Fee Guideline for Professional Services*. In the absence of a contracted rate, the reimbursement for a professional service, including an evaluation and management service, is established under paragraph (c). §134.203 (c) states “To determine the MAR for professional services, system participants shall apply the Medicare payment policies with minimal modifications. The term “Medicare payment policy” is defined for this rule by §134.203 (a)(5). The definition includes billing the correct codes as specified by Medicare.

The Medicare billing policy applicable to the disputed service can be found at [www.cms.gov](http://www.cms.gov) in the CMS Manual System Pub 100-04 Medicare Claims Processing, Transmittal 1875, Change Request (CR) 6740, dated December 14, 2009, effective January 1, 2010. CR#6740 states that the use of all consultation codes (ranges 99241-99245 and 99251-99255) was eliminated effective January 1, 2010. In lieu of consultation codes, participants were directed to use codes 99201-99205 that identify the complexity of the visit performed. The eliminated codes include 99244 which the requestor reported on its medical bills.

The division concludes that the requestor failed to code the office consultation in dispute in accordance with the applicable Medicare policy in effect on the date the service in dispute was provided, thereby failing to meet the correct coding requirements of §133.20(c), and §134.203 (b)(1). For that reason, no reimbursement can be recommended.

### Conclusion

For the reasons stated above, the Division finds that the requestor has established that reimbursement is due for the specified services. As a result, the amount ordered is \$238.63.

### **ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to reimbursement for the specified services in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$238.63 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### **Authorized Signature**

_____	_____	<u>August 22, 2013</u>
Signature	Medical Fee Dispute Resolution Manager	Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**